

October 21, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: WC Docket No. 10-90, 07-135, 05-337, and 03-109
GN Docket No. 09-51, CC Docket No. 01-92 and 96-45

Dear Madam Secretary:

I write to express my concern about the lack of access to telecommunications and broadband services in Puerto Rico, and the urgent need for the Federal Communications Commission ("FCC", "Commission") to take steps to address this need. I request that you include this letter in the record in the above-referenced dockets.

PR Wireless, Inc. ("PR Wireless") is a provider of mobile wireless telecommunications service in Puerto Rico doing business under the Open Mobile brand. The company has been eligible for support from the High Cost and Low Income Programs of the federal Universal Service Fund ("USF") since 2007.

PR Wireless is a leader in making wireless telephone service accessible in rural, high-cost areas, and affordable to low-income citizens. PR Wireless is fully committed to a pay-in-advance, no-contract business model with unlimited local calling. Thanks to its consumer-friendly pricing structure and its diligent efforts in making discounts available to low-income residents, PR Wireless has more than doubled its subscriber base in the last three years. The federal universal service fund provides support to the company's efforts by subsidizing the cost of building, operating, and maintaining towers and other network infrastructure in remote areas and providing discounts to citizens who cannot afford telephone service.

The Commission is on the verge of making fundamental changes to reform the universal service and intercarrier compensation regimes in conjunction with its efforts to promote broadband deployment. While PR Wireless is supportive of the Chairman's goal of providing ubiquitous broadband, PR Wireless is concerned that the major industry proposals currently under consideration do not recognize the unique geographic, economic and social conditions in insular areas. PR Wireless notes that the Chairman recently stated that the forthcoming Connect America Fund, intercarrier compensation and USF reform order would include special provisions for tribal areas. It is critically important that the Commission similarly adopt measures that address the difficult circumstances of Puerto Rico and other insular areas.

This critical need was made clear at the recent hearing of the Senate Committee on Commerce, Science and Transportation on Universal Service reform, where several of those present discussed the unique challenges of providing both voice communications and broadband to insular areas. In an opening statement, Senator Daniel Inouye said: “I am pleased that the proposal recognizes that adjustments must be made to recognize unique needs. But I am concerned the proposal will not go far enough to help Native communities and remote, insular areas.” He went on to summarize the problem:

With respect to remote, insular areas, many of my colleagues have heard me speak over the years about the unique challenges facing these communities, and the need to target assistance to assure the availability of affordable, advanced communications services, comparable to the services available in urban areas. To this end, during deliberation on the Telecommunications Act of 1996, I advocated the inclusion of a provision to specifically recognize the needs of remote, insular areas, including the state of Hawaii and the American territories. There is no question that there are severe geographic and economic obstacles to providing broadband technology in these areas, including geographic isolation, volcanic activity, difficult terrain, severe weather, high transportation costs.¹

Witness Kathleen Abernathy, even while promoting the ABC Plan, directly acknowledged that the plan would be inappropriate for insular areas:

The FCC has always traditionally treated insular areas and Alaska, Hawaii, other insular areas, separate and apart from what this plan would focus on because frankly, designing a plan for the other state just would not work in Alaska . . . so, I fully expect that the FCC will have a totally separate program.²

Other witnesses similarly acknowledged the need to treat insular areas differently.³

The FCC has been presented with overwhelming evidence that carriers in Puerto Rico and other insular areas face unique challenges in the provision of telecommunications service. For example, Puerto Rico Telephone Company has pointed out to the FCC the following challenges:⁴

- higher shipping-related costs, because all the supplies necessary for creating and maintaining a telecommunications infrastructure must be shipped and stored at considerable expense;

¹ Statement of Sen. Daniel Inouye, available at <http://www.c-spanvideo.org/program/UniversalS#> (05:56).

² Testimony of Kathleen Abernathy, Chief Legal Office and Executive VP, Frontier Communications (1:34:07).

³ Testimony of Michael Powell, President and CEO, NCTA (1:35:54); Testimony of Philip Jones, Commissioner, Washington Utilities and Transportation Commission (1:38:13).

⁴ Petition for Reconsideration of Puerto Rico Telephone Company, Inc., WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109 (April 27, 2010) at pp. 17-18.

- higher operational costs associated with the topography of Puerto Rico, such as the rough, hilly terrain and heavy tropical vegetation in sparsely populated inland areas that result in telecommunications transmission facilities requiring additional guying and anchoring and the distances between points being increased;
- higher operational costs associated with the climate of Puerto Rico, which is corrosive and inhospitable to telecommunications equipment, leading to accelerated deterioration of equipment and severe tropical weather in the Caribbean requires frequent reconstruction of existing infrastructure due to storm and hurricane damage; and
- a customer base with the lowest per capita income as compared to any U.S. state (approximately one-third of the national average and less than half that of the lowest U.S. state), 44.8 percent of which live below the poverty line.⁵

The unique geographic, economic and social challenges faced by Puerto Rico and other insular areas combine to produce consistently low subscriber levels in the territories, resulting in unavailable or high-cost telecommunication service.

In Puerto Rico, access to broadband service lags far behind the rest of the country. In the National Broadband Plan, the Commission noted that available data suggest that less than 10% of residents of tribal lands have broadband service available.⁶ Available data suggest that broadband service lags even further in Puerto Rico. Based on the Commission's latest Internet Access Status Report, only 35% of households in Puerto Rico have Internet access, and of those connections, 95.3% have speeds of at least 200 kbps in at least one direction.⁷ Of course, this speed does not meet the Broadband Plan threshold of 1 Mbps upstream and 4 Mbps downstream. According to the recent SpeedMatters study released by the Communications Workers of America, only 9% of Puerto Rico residents with Internet access can access that service at broadband speeds – that is, at least 4 Mbps downstream – compared to roughly half of residential subscribers in the U.S. overall.⁸ Together with the Commission's 35% figure for Internet access at 200 kbps and up, this suggests a broadband penetration figure of roughly *three percent* in Puerto Rico. Among those with Internet connections, average Internet speeds across Puerto Rico were measured at around 900 kbps, compared to approximately 3.0 Mbps in the U.S. as a

⁵ Puerto Rico's per capita income is \$10,064, compared to \$27,466 for the United States overall. See Puerto Rico Selected Economic Characteristics 2008, Puerto Rico Community Survey, American Fact Finder, available at <http://factfinder.census.gov/>. The per capita income in Mississippi, the lowest on the mainland, is \$20,228. See United States Selected Economic Characteristics 2009, American Community Survey, American Fact Finder, available at <http://factfinder.census.gov/>.

⁶ National Broadband Plan at 152.

⁷ Internet Access Services: Status as of December 31, 2009 (Indust. Analysis Div. Wireline Comp. Bur., December 2010) at Tables 16, 20.

⁸ Speed Matters: Affordable High-Speed Internet for America (Nov. 2010) at 47. The study is available online at <http://www.speedmatters.org/content/resources/>.

whole.⁹ The only slower average Internet speed was reported in the U.S. Virgin Islands, another insular U.S. territory.¹⁰

In addition to the island being far behind the rest of the U.S. in broadband availability and adoption, Puerto Rico also has suffered a persistent lag in access to mobile wireless service when compared to the U.S. mainland. Based on the most recent data, only 64.3 percent of Puerto Ricans have access to a wireless phone,¹¹ compared to 90 percent on the mainland.¹²

Despite these challenges, the high-cost universal service mechanism currently in place has greatly diminished the support available for constructing and operating telecommunications networks on the island. In 2001, the monthly high-cost support levels in the two incumbent study areas in Puerto Rico was approximately \$7.00 and \$12.00 per line, respectively. This has decreased to the current levels of approximately \$4.00 and \$5.00 in monthly support per line, respectively.¹³ When compared to the hundreds and even thousands of dollars per line received by the telephone companies profiled in the FCC's recent data submission to Congress,¹⁴ the roughly \$50-\$60 in annual support per line in Puerto Rico is a pittance. PRTC-Central, the incumbent study area with the higher support level of the two in Puerto Rico, is ranked 1,245th out of 1,440 study areas in terms of support per line.¹⁵

Given the high costs and other challenges of building telephone networks in Puerto Rico, it defies logic that the amount of support per line would decrease over time, and to such a dramatic extent. The existing mechanisms have done little to address the gap between the availability of telephone service in Puerto Rico compared to the mainland. By ratcheting down the levels of high-cost support available to ETCs in Puerto Rico, the existing USF mechanism has all but ensured that this lag will persist if serious steps are not taken to address it.

PR Wireless agrees with Sen. Inouye that reform of universal service must include a special carve-out that recognizes the challenges of serving insular areas. Congress directed the

⁹ *Id.*

¹⁰ *Id.* at 55.

¹¹ Puerto Rico Telecommunications Regulatory Board, "Total de Líneas Inalámbricas por cada 100 Habitantes en Puerto Rico Años 2000 – Marzo 2010," accessed at <http://www.jrtrp.gobierno.pr/documentos/Estadisticas/2009/informe%202009.asp>.

¹² *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report (rel. May 20, 2010) at ¶ 155.

¹³ See USAC Second Quarter Appendices – 2010, Appendix HC09 (Interstate Common Line Support Projected by State by Study Area, at <http://www.usac.org/about/governance/fcc-filings/2010/quarter-2.aspx>).

¹⁴ See Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce, Universal Service Fund Data Request of June 15, 2010, Part 3 (Largest Per-Line Subsidies, by Study Area).

¹⁵ See USAC High Cost Appendices HC01, HC05, HC08, HC09 and HC12 at <http://www.usac.org/about/governance/fcc-filings/2010/quarter-2.aspx>.

FCC to address the lack of telecommunications services in insular areas such as Puerto Rico. Section 254(b)(3) of the Communications Act of 1934, as amended (“Act”) lists insular areas separately from rural and high-cost areas.¹⁶ The statute states that the Commission “shall” base its universal service policies on the principle that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁷

Given the use of the word “shall” in the first sentence of Section 254(b), the statute binds the Commission to ensure the availability of comparable telecommunications services and rates in insular areas.

In 2005, the Commission affirmed this obligation and acknowledged that statutory goals were not being met in Puerto Rico, tentatively concluding that an insular high-cost mechanism was needed.¹⁸ Yet, five years later, and nine years after Congress directed the Commission to ensure the availability of telecommunications services in rural, insular, and high-cost areas comparable to those in urban areas, the Commission has yet to follow through on its tentative conclusion.

The Commission has adopted woefully inadequate half-measures instead of a real solution. In an order released in April 2010, the Commission declined to establish a separate insular mechanism and proposed to adopt a modified version of existing low-income telephone connection discounts for consumers in Puerto Rico. In response, PR Wireless has submitted comments to the FCC emphasizing that the circumstances of Puerto Rico demanded an insular high-cost support mechanism, and explaining that the new low-income discounts would do little to address the gap between telecommunications access in Puerto Rico and on the mainland. PR Wireless also filed comments in support of PRTC’s petition for reconsideration of the FCC’s order declining to adopt an insular mechanism. Most recently, PR Wireless stressed the need for an insular mechanism in its comments in July and August in response to the FCC’s proposal to implement the National Broadband Plan and reform the Universal Service Fund.

Numerous representatives of insular areas have written to the Commission recently to express concerns regarding the need to ensure sufficient support to address the challenges of serving insular areas. In April 2010, Rep. Pierluisi wrote to Chairman Genachowski expressing

¹⁶ PRTC Petition at p. 4.

¹⁷ 47 U.S.C. § 254(b)(3) (emphasis added).

¹⁸ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19746, ¶ 33 (2005).

the need for reforms to increase access to telecommunications and broadband services in Puerto Rico. In response, the Chairman gave his “personal assurance” that the Commission will be mindful of Rep. Pierluisi’s concerns and the “unique barriers present in Puerto Rico and other insular areas.”

More recently, on September 21, 2011, Rep. Pierluisi emphasized in a letter to the Commission that:

Your *Seventh Broadband Progress Report* shows that the FCC has made little progress since its *Sixth Broadband Deployment Report*, which revealed that the overwhelming majority of households in Puerto Rico remain unserved by broadband at speeds widely available throughout the rest of the United States. Because reducing this disparity is critical to Puerto Rico’s economic future, I respectfully request that, in reforming and modernizing the Universal Service Fund, you pay particular attention to how any proposals may affect support for Puerto Rico.¹⁹

On October 17, 2011, Puerto Rico Governor Luis Fortuño wrote to all four FCC Commissioners underscoring the difficult challenge of extending broadband service to all of Puerto Rico. Governor Fortuño noted that the availability of broadband service in Puerto Rico “is a far cry from the availability estimates across most other US states and jurisdictions.”²⁰ The Governor went on to emphasize:

Should Competitive Eligible Telecommunications Carriers become ineligible for funding under the new Connect America Fund, Puerto Rico would see a drastic reduction in USF funding, which would have a profound impact on the overall growth of the market (including both last mile and backhaul infrastructure investments). Puerto Rico supports the notion that only unserved areas should receive subsidies. We hope to work with the Commission that is the case in Puerto Rico and elsewhere. If the Commission is true to this vision ... Puerto Rico ought to receive under the new plan proportionally greater – not lower – subsidies for broadband build-out than most other states.²¹

Letters have also been submitted by other representatives of insular areas. On October 4, 2011, the congressional representatives from Guam, the Commonwealth of Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands urged the Commission “to finally recognize the unique challenges facing the Insular Areas, and to adopt appropriate – and specially tailored – universal support mechanisms for carriers serving the U.S. Territories,

¹⁹ Letter from Rep. Pedro R. Pierluisi to Chairman Genachowski and Commissioners Copps, McDowell and Clyburn (Sept. 21, 2011) at p. 1.

²⁰ Letter from Gov. Luis Fortuño to Chairman Genachowski and Commissioners Copps, McDowell and Clyburn (Oct. 17, 2011) at pp. 3-4.

²¹ *Id.* at p. 4.

including exempting insular carriers from any phase-down of – or caps on – current levels of high-cost support.”²² Similar concerns were expressed in a letter submitted shortly thereafter by the Office of Insular Affairs of the U.S. Department of the Interior.²³

In sum, there is widespread consensus that the current proposals are not sufficient to address the persistent challenges facing insular areas. There is ample record evidence that the current mechanism has not been sufficient to close the wireless and broadband availability gaps between Puerto Rico and the U.S. mainland, and that an insular carve-out is warranted.

We appreciate your attention to our concerns, and we are hopeful that you will take appropriate steps to ensure that the people of Puerto Rico and other insular areas have similar access to telecommunications and broadband services as people in the mainland United States.

Sincerely,



Federico Grosso
Vice President of Finance and Chief Financial Officer

cc: Chairman Genachowski
Commissioner Copps
Commissioner Clyburn
Commissioner McDowell
Edward Lazarus
Zachary Katz
Margaret McCarthy
Christine Kurth
Brad Gillen
Patrick Halley
Sue McNeil

²² Letter from Reps. Madeleine Z. Bordallo, Eni F.H. Faleomavaega, Donna Christensen and Gregorio “Kilili” Camacho Sablan to Chairman Genachowski (Oct. 4, 2011).

²³ Letter from Anthony M. Babauta, Assistant Secretary for Insular Areas, to Chairman Genachowski (Oct. 7, 2011).